THE PUBLIC SERVICE COMPANY LAW OF PENNSYLVANIA

By William N. Trinkle,

Counsel, Public Service Commission of the Commonwealth of Pennsylvania.

State commission regulation of public utilities—regulation having the binding force of law—began in Pennsylvania on the first of the present year when the public service company law of July 26, 1913, went into full effect.

This legislation drafted by Attorney-General Bell, to carry out the policy expressed in Governor Tener's inaugural address and subsequent messages to the legislature, establishes a commission of seven members, which, acting upon its own motion, as well as upon complaint, has full power extending throughout the commonwealth to supervise, investigate, and, by its reasonable orders, to regulate the service and rates of public service companies to the end that such service shall be reasonably adequate and furnished without unreasonable discrimination or preference (as to either rates or service), at such rates of compensation as shall be just and reasonable to the public and the public utility alike.

Prior to this time there had been no regulation of the kind, which, applied by an administrative body of adequate powers, places upon a rational basis of control, and makes real, the true legal and economic relation existing between quasi-public corporations or unincorporated public service companies and the public whom they serve. Pennsylvania has moved more slowly and conservatively toward this end than have Wisconsin and New York, as if awaiting the result of the experience gained from the practical operation of similar statutes in these sister states during the past six years. In 1907, the same year which witnessed the enactment of the advanced Wisconsin and New York statutes, the Pennsylvania legislature passed an act pursuant to which the Pennsylvania State Railroad Commission was established, and which gave that body power to make investigations, to hold hearings, and to make recommendations as the result thereof, but gave it no power to order compliance with its recommendations when made. Within the limits of such restricted powers the work done by the

Pennsylvania State Railroad Commission was of much value and prepared the way for the adoption in 1913 of the more comprehensive and effective system for the regulation of all public utilities by the present Public Service Commission of the commonwealth.

There can be little doubt that there will always be some sort of governmental control of public utilities. By reason of the public nature of their business, the common law itself has, from the earliest times, prescribed general rules by which this business shall be governed, leaving the application and enforcement of these rules to such processes as the judicial department of the government has the power to employ for that purpose. With the progress of science and invention and the general advance of civilization, have come the steam railroads, the telegraph and the telephone among the great utilities of state-wide and country-wide operation. Under modern conditions these public utilities are practically public necessities. There are also the electric light, heat and power companies; the electric railways and the gas companies; the water companies and the like, whose activities in the interest of public economy tend to become more and more state-wide and to present social and industrial problems not merely of local concern but of state-wide importance. It has become apparent that no substantial progress can be made toward the practical adjustment of the true relationship between such utilities and the public, and of the rights and duties on both sides of that relationship, by resort either to the courts or to spasmodic legislation. The non-feasibility of either of these methods is perfectly obvious. Neither is there need to review the positive evils caused by such methods of dealing with this vital problem.

Intelligent and adequate regulation pre-supposes, in a continuing administrative agency of the government, that knowledge of operating and other conditions of the public utility business, which is wholly beyond the proper sphere of action of either the judiciary or the legislature, in periodical assembly met, to have, acquire or apply. There must be a governmental agency to which a complainant, without the means sufficient to carry on litigation, may go for redress of his particular grievance, and, moreover, obtain not merely the negative but positive remedy. This tribunal must be able to sift the merits of the individual complaint and the complaint of the public generally, in the light of the data and information which as a continuing body it either has, or in the exercise of its adequate powers for that purpose,

it can and should get, so as to make the proper application and adjustment of the general rules of law to the particular facts and conditions as they may be determined. Neither the general assembly nor the courts are institutions of a character adapted to the discharge of this indispensable function. An executive or administrative body such as the commission under the Pennsylvania public service company law, is so adapted, and best adapted, for that purpose. It is the clearing house for such public complaints as arise from lack of necessary information, as well as for those which prove well founded and require correction. The public and the utility are thereby equally protected; their respective rights and obligations under the law are weighed in the balance and adjusted; specific rules and regulations of uniform application under like circumstances are laid down for the guidance of the public and of the utilities, and are in the interest of both.

It will not be possible, within the limits of this brief résumé, to mention other than the more important provisions of the new Pennsylvania statute. The act has been drawn with a great deal of painstaking care. The provisions of the similar acts in Wisconsin, New York and New Jersey, have been subjected to considerable study in the light of their practical operation in those states. More recent legislation, such as that in California, Maryland and elsewhere, was also reviewed. The effort was to prepare a sound, comprehensive and effective measure.

In arrangement the act is divided into six articles. Article I is devoted to an enumeration of the classes of public utilities within its provisions—which enumeration includes all classes—and to the definition of such terms as "service," "facilities," etc., as these terms are used throughout the act. Article II sets out specifically the "duties and liabilities of public service companies." Article III consists of the definition of the corresponding "powers and limitation of powers of public service companies," and the provisions governing their creation. By article IV, the establishment of "the Public Service Commission of the Commonwealth of Pennsylvania," its officers and employees, etc., is provided for. Article V is the article in which the "powers and duties of the commission" are defined; and article VI prescribes the "practise and procedure before the commission and upon appeal."

It is made the express duty of every public service company to

furnish reasonably adequate and reasonably safe service at just and reasonable rates. Rates, and rules and regulations, etc., affecting rates, must be set forth in tariffs or schedules which the act requires shall be posted and kept open to public inspection. The posting of these tariffs is mandatory. The furnishing of any service without such posting of tariffs is unlawful. The commission may also require the tariffs to be filed as well as posted and will undoubtedly do so, now that the tariff bureau has been organized.

No change in either a posted or filed tariff can be made except upon 30 days' prior notice to the commission. Similar 30 days' notice of the effective date of change must also be given to the public by posting such notice. The commission is given the power, however, to allow a change in tariff on less than the 30 days' statutory notice if cause be shown. In the event that the commission has prescribed a rate, practise or classification, no change can be made therein, within a period of three years thereafter, without the express approval of the commission. These provisions of the law likewise apply to joint rates and joint tariffs. If the tariff be filed, the filed rate is the legal rate as against the company, otherwise, the published or posted rate is such legal rate.

When, after investigation and hearing, the commission finds that any rate is unreasonable, unjustly discriminatory or unduly preferential, it has full power to prescribe by its orders the just and reasonable maximum rates or joint rates as the case may be, and also to apportion the said joint rates. It has similar power to prescribe reasonably adequate and safe service, including facilities. In so doing, the commission may act as in the investigation of accidents, and as indeed, in all other matters, on its own motion as well as upon complaint.

The enumeration of specific duties as to the furnishing of facilities and service imposed upon common carriers and other public utilities by the statute would be prohibitively tedious. Among these duties of carriers, for example, are those relating to the equitable distribution of cars, reasonably continuous transportation, the construction of switch connections, the establishment of through routes and joint rates, the location of stations, grade crossings, the reporting of accidents, and the like.

An initial carrier receiving property for through shipment between points in Pennsylvania incurs, under the act, a liability for loss or damage in transit similar to that imposed by the Carmack

amendment to the interstate commerce act. There is, however, a little different treatment of the initial carriers' right of recovery over against the connecting carrier actually causing the loss, which perhaps provides a fairer adjustment than that prescribed by the corresponding provision in the Carmack amendment.

The commission has power to award reparation to the person actually sustaining damage by reason of the collection of rates found by the commission to have been unjust and unreasonable or unjustly discriminatory or unduly preferential, or in excess of the applicable rates contained in the tariffs. For the collection of the amount named, in the order of reparation, suit may be brought in any of the courts but no action can be brought in the courts for the recovery of reparation for the above mentioned wrongs until the commission shall first have determined the facts as to the violation of the law in these respects.

The commission has complete power to prescribe a uniform system of accounting to be followed by the various classes of utilities. In ascertaining fair value of property for rate making and other purposes of regulation, the commission is not in any wise confined to any particular formula. It may take into consideration such matters as original cost of construction, cost of reproduction, new, etc., etc., as referred to in Justice Harlan's famous opinion in Smyth *vs.* Ames, 169 U.S., 546, and may also consider such intangibles as developmental or going concern value. It is provided that "these and any other elements of value shall be given such weight by the commission as may be just and right in each case." These elastic provisions of the act, with regard to valuation, though drawn some time before the decision of the Supreme Court of the United States in the Minnesota rate case was announced, are in striking harmony with Mr. Justice Hughes' opinion in that case, viz., "the ascertainment of that value is not controlled by artificial rules. It is not a matter of formulae, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts." Around this vital, economic-legal problem as to what is the "fair value of the property used for the convenience of the public" and the fair return thereon, centers much of the whole problem of rate regulation itself. It was deemed wise to mention in the statute some of the considerations which enter into the ascertainment of this fair value, but the weight

to be given any one or more of them was left to the judgment of the commission.

The expediency of including municipal corporations in the scheme for the regulation of public utilities as prescribed by the act, is, of course, a debatable question. Their omission must be taken to mean that in the legislative judgment, it was for the time being, at least, unwise to subject to the regulative control of a state commission such utilities as are owned and operated by the various local governments throughout the state. There would seem on principle to be less necessity for regulation in such cases where the consumers are also in reality the owners and operators and thus have the remedies for abuses in their own hands. The act does provide, however, that where a municipality is engaged in the rendering of service of the kind rendered by a privately owned utility, it must, under the act, comply with the requirements of the commission as to uniform accounting in the same manner as public service companies.

Commissions have uniformly held that, where a public service company has made its investment for the furnishing of service within a municipality and is rendering, or can be required to render, reasonably adequate service to the community, at just and reasonable rates, another public service company should not, under a proper system of regulation, be allowed to enter into competition with the existing company, unless the commission is satisfied that the public interest and service will be promoted thereby. The same principle would apply, to a very large extent, to such competition by the municipality itself. Hence the act provides that the commission's certificate of public convenience shall be secured before any public service company may lawfully obtain any additional powers, franchises or privileges, and before any municipality may acquire, construct or begin to operate any plant, equipment or facilities for the furnishing to the public of any service of the kind or character already being furnished by any public service company within the municipality. A like certificate of public convenience must be obtained for the incorporation of a public service company, and no contract between a public service company and any municipal corporation is valid, unless it receive the approval of the commission, evidenced by the latter's certificate of public convenience. Such certificates of public convenience are given "if and when the said commission shall find or

determine that the granting or approval of such application is necessary or proper for the service, accommodation, convenience or safety of the public." In this way, needless competition with the long train of evils which it frequently engenders, to the detriment of the public service and rates and the consequent increasing occasion for regulation of such service and rates, is excluded before it becomes intrenched.

There are respectable authorities who still maintain that the sole function of a public utilities commission should be to regulate service and rates to the end that the service shall be reasonably adequate and the rates of compensation just and reasonable, and that the regulation of the subject of capitalization or the issues of stocks, bonds and other securities of public service corporations, has no proper place in a public utility statute. They take the position that it is the duty of a public service company to render, and the function of the commission to require it to render, reasonably adequate service, and to charge no greater rates for that service than will afford fair return upon the fair value of the property of the company, used and useful for the convenience of the public, and that the amount of stocks, bonds and securities outstanding has nothing whatever to do with the question. But it cannot, I think, be successfully contended that the over-capitalization, say of a gas company or an electric light or power company, does not have a direct tendency either to stint the adequacy of the service or the justice of the rates to the consuming public and thereby greatly increase the occasion for the regulation of such service and rates by the commission. If this be true, then the regulation of the issue of stocks and bonds becomes in effect a regulation *pro tanto* of service and rates, and moreover it gets rid of many embarrassing moral obligations having a tendency to confuse what should be the real issues in rate and service regulation. The bona fide investing public, who own the utilities, are entitled to some measure of protection as against what might be the effect of regulation by the government in the interest of the consuming public, and there is in any event the ever present public belief as to the detrimental effect of watered stock and inflated bonds on service and rates.

Whether this public impression proves in the particular case to be well or ill-founded, it nevertheless results in general public dissatisfaction and invites a multiplicity of complaints and therefore the cause of such impression should, as far as possible, be removed.

The best means of accomplishing this object was a question most carefully considered in the preparation of the Pennsylvania act. Wisconsin and New York, and I think, all other states which have undertaken the regulation of public utilities under a system like that now devised for Pennsylvania, have quite uniformly required that the consent of the commission be obtained before a public service company can lawfully issue any stocks, bonds or other securities. This was the method of dealing with this matter which was adopted in the bill originally presented to the legislature in 1911. The arguments urged against it at that time on the score of delay and great practical inconvenience, not only to the companies forced to await the decision of commissions upon the approval or disapproval of their financial arrangements, but on the ground of great practical inconvenience to the commissions themselves, were most forceful. In order to meet these objections and at the same time to provide ways and means whereby the provisions of the constitution of the commonwealth against the watering of securities might be practically enforced by the commission, instead of being allowed to remain the dead letter, as it has so largely been in the past, the attorney-general devised the plan of dealing with this matter which is the distinguishing feature of the Pennsylvania statute. This plan is an adaptation and modification of the certificate of notification or publicity plan, which the Railroad Securities Commission (of which President Hadley of Yale University was the chairman) after much study and solemn deliberation has recommended to Congress for the regulation of the issues of stocks and securities by the interstate railroads of the country. For the justification of this plan, the reader is referred to the very able report of the Railroad Securities Commission. As adapted and modified in the Pennsylvania statute, by means of the certificate of notification filed by the company with the commission at or before the time when the stocks, bonds or other securities are issued, the public is given a detailed description of the property, work or labor in consideration of which such stocks or securities are about to be issued, as well as all other needful information including the purpose of the issue. The commission may then, upon complaint or upon its own motion, investigate and determine whether any such issue has been made for other than "money, labor done or money or property actually received" in violation of the requirements of the constitution and the law of the commonwealth. In the event of such violation, it may

take the appropriate steps prescribed by the act for the drastic punishment of the individual and corporate offenders and the restraint of the consummation of the unlawful purpose. These provisions are supplemented by the requirement that the company shall report or account to the commission for the proper disposition and application of the proceeds of such issues in accordance with the purpose set forth in the published certificate of notification which remains on file with the commission. For such public service companies as desire to make application to the commission for the latter's certificate of valuation on the issue of stocks and securities, the way is left open, as they are given the option so to do. The effect of this certificate of valuation is specifically defined in the statute.

It would require too much space to attempt even a brief analysis of what is perhaps the best system yet devised in a statute of this character for the abolition of railroad and other grade crossings, dangerous to human life; and no railroad crossing of any character can be constructed, whether above grade or below grade or at grade, without the consent of the commission, evidenced by its certificate of public convenience being first had and obtained. Similar approval is necessary for the construction of other crossings including those of high tension electric power lines.

Every statute of the character of the public service company law of Pennsylvania contains provisions as to economic or legal policy about which the opinions of men, most competent to express them, might reasonably differ. Perfection in this kind of legislation perhaps must ever remain but an ideal toward the realization of which human effort in all probability can never reach more than an approximation. It is gratifying to know, however, that an authority, whose judgment is second to none in this country, has stated in a letter to the writer that "I certainly am not familiar with any law on the subject of public service companies which seems to me so good as that of Pennsylvania."